

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.290 of 1995

Date of decision 22.6.2007

Anup Chand and others

Appellants

Versus

Ram Saran and ors.

Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ No.

For the appellants : Mr. Bhupender Gupta, Senior Advocate, with
 Mr.Janesh Gupta, Advocate.

For the respondents : Mr. R.K.Sharma, Advocate,

Rajiv Sharma J.

This Regular Second Appeal arises out of the judgment and decree passed by the learned Additional District Judge, Kullu on 1.4.1995 in Civil Appeal No.1/1993.

The brief facts necessary for the adjudication of the second appeal are that the plaintiffs-respondents hereinafter referred to as the plaintiffs for convenience sake, had filed a suit in the court of Senior Sub Judge, Lahaul and Spiti District at Kullu on 8.8.1989 for permanent prohibitory injunction. The learned trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the plaintiffs have got right to take the leaves of trees and other bartandari rights in Lingcha Banaun as alleged ? O.P.P.

¹ Whether reporter of local papers are allowed to see the judgment ? No.

2. Whether the plaintiffs are entitled to the relief of permanent prohibitory injunction as prayed for? O.P.P.
3. Whether the plaintiffs are estopped from filing the present suit by their acts and conduct as alleged? O.P.D.
4. Whether the suit is bad for non joinder of necessary parties? O.P.D.
5. Whether the suit is not competent nor maintainable as alleged? O.P.D.
6. Relief.

The trial court had returned the following findings:

Issue No.1 Yes.
 Issue No.2 Yes.
 Issue No.3. No.
 Issue No.4 No.
 Issue No.5. No.
 Issue No.6 Suit decreed as per operative portion of Judgment.

The learned trial court on the basis of the statements of the PWs, DWs and evidence both oral and documentary had decreed the suit of the plaintiffs. The defendants feeling aggrieved by the judgment and decree passed by the learned trial court on 20.11.1992 had preferred an appeal before the learned Additional District Judge, Kullu. The learned Additional District Judge had framed the following points for determination:-

1. Whether the plaintiffs-respondents have acquired bartandari rights in the Lingcha Banaun and Marhaun forests as claimed ?
2. Whether the suit of the plaintiffs-respondents is not maintainable as alleged?
3. Whether the suit is bad for non joinder of necessary parties as alleged ?
4. Final order.

The findings recorded on the same are as under:

Point No.1 Yes.

Point No.2 Maintainable.

Point No.3 No

Point No.4 the appeal is dismissed as per operative portion of the judgment.

Mr.Bhupender Gupta learned senior counsel appearing for the appellants had strenuously argued that the judgment and decree passed by the learned Additional District Judge is not sustainable in the eyes of law. Mr.R.K.Sharma, learned counsel appearing for the respondents had supported the judgment and decree of the learned appellate court.

I have heard the learned counsel for the parties and have gone through the record of the case carefully.

The second appeal was admitted on the following substantial questions of law:

1. Whether in a suit in which the defendants were throughout sued in representative capacity, was it not incumbent for the courts below to have given due public notice by publication and proclamation as envisaged under Order 1 Rule 8 of the Code of Civil Procedure: In the absence of granting such permission could such suit be maintained and decreed?
2. When a suit is dismissed having been abated, can a subsequent suit be filed for the same and similar relief merely on the ground that the plaintiffs-respondents have purchased some more land in the village? What is the effect of provisions of Order 22 in the said suit?
3. When the defendants-appellants are being sued in the representative capacity and there are more persons interested in the dispute between the parties, apart from the persons mentioned in the list, is it not incumbent for the plaintiffs to array all the individuals interested holders, estate right holders? Is not the suit bad for non joinder of necessary parties, unless the said persons are joined in the suit and are given due notice as provided for in law?
4. Whether it was necessary for the plaintiffs to have based their claims on some customary rights, can a suit of the present nature be filed and maintained without pleading the right on the basis of which the suit was instituted?

5. What was the effect of the admission of Shri Ram Saran, one of the plaintiffs and the forest rules which have the effect that no new person can be entitled for exercising bartandari rights merely by purchase of some land?

Since all these questions are interconnected they are being taken up together for determination.

It is evident from the sale deeds placed on record by the plaintiffs before the trial court that they have purchased all the rights, including bartandari rights. The entries were incorporated after the sale in the jama bandis. A bare perusal of jamabandis show that the entire khasra numbers were sold. Defendant No.2 Anup Chand had admitted in his cross-examination that the plaintiffs had purchased all the rights, including the bartandari rights on the basis of the sale deeds. The plaintiffs had purchased the land from various right holders of Phati Dwara, including the bartandari rights vide sale deeds Ex.PA. PB, PC, PD, PE and PF. The trial court and appellate court are right in coming to the conclusion that the suit filed by the plaintiffs was not based on same cause of action. The courts below have also come to the right conclusion that the suit was filed by the plaintiffs asserting their individual right of bartandari in the forests in question. The appellate court on the basis of the evidence and arguments advanced by the parties had correctly given the finding that there was implied permission to file a suit and even if the permission has not been there the suit could not be dismissed for want of such permission as the plaintiffs were asserting their individual rights and not right of their community. The findings recorded by the trial court with regard to the applicability of Rule 4 –A are upheld. Since the right holders have alienated their entire holdings in favour of the plaintiffs it cannot be presumed that the right holders had only alienated fraction of holdings.

In view of the above, in my opinion, there is no merit in this appeal, especially when no question of law much less a substantial question of law arises for determination in this appeal. Accordingly, finding no merit in this appeal the same is hereby dismissed with no order as to costs.

June 22, 2007(g)

(Rajiv Sharma),J.